IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN THE MATTER OF AN ARBITRATION AGREEMENT BETWEEN HENRY CONTROLS, INC. & WEED INSTRUMENTS CO., INC. d/b/a ULTRA ELECTRONICS NSPI

Case No. 17-CV-276-SS

ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Petitioner Henry Controls, Inc. (HCI)'s First Amended Motion to Compel Arbitration [#6], Respondent Weed Instrument Co., Inc. d/b/a Ultra Electronics NSPI (Ultra)'s Response [#12] in opposition, and HCI's Reply [#16] in support. Having reviewed the documents, the governing law, and the file as a whole, the Court now enters the following opinion and orders.

Background

HCI is a Canadian corporation owned and operated by Hank Rasanen (Rasanen). Ultra—incorporated in Delaware and operating offices in Round Rock, Texas—is a technology company engaged in the design, manufacture, and sale of high volume temperature sensors and high performance products for nuclear power plants and other entities engaged in industrial automation. Although Ultra accepts orders directly from customers, it also relies on a network of sales representatives and distributors. Rasanen served as the exclusive Canadian sales representative for Ultra for seventeen years. A Sales Representation Agreement (the Agreement), dated April 1, 1998

and amended March 24, 2011, governed the relationship between HCI and Ultra. Am. Mot.[#6] at 12–27.[1]

The Agreement granted HCI "rights to market and solicit orders for the sale of [Ultra] products" in the "territory of Canada." *Id.* at 17, 28. The Agreement specified HCI would be paid on commission as described in an attached schedule. *Id.* at 17. The Agreement also declared the following:

> Either party may terminate this Agreement at any time with or without cause, on the giving of thirty (30) days' written notice to the other party which notice shall be effective when mailed. In the event either party terminates this Agreement without cause, the commissions on all orders entered by [Ultra] prior to the effective date of termination shall be paid to the Representative in normal time as stated in Paragraph 3.2.

Id. at 22.

Furthermore, "[a]s an express condition" of the Agreement, the parties indicated they "agree[d] that any dispute arising between the parties from or in connection with this Agreement as well as any dispute about the validity of this Agreement shall be finally settled by a Court of Arbitration . . . ." *Id.* at 23. The Agreement established a process for initiating arbitration:

> Nominations [of the arbitrators] shall take place not later than four (4) weeks after one party has notified the opposing party in writing of the nomination of its arbitrator and has requested the opposing party to follow suit. Should the opposing party fail to follow suit within this period, the arbitrator shall be nominated, on application of the other party, by the judge of the United States District Court for the Western District of Texas, sitting in Austin, Texas.

Id.

---

[1] Rather than separating supporting documents into individual exhibits, HCI merely attached them to the end of its motion. Thus, in referencing these documents, including the Agreement, the Court cites the relevant CM/ECF page numbers of HCI's amended motion to compel.

On April 1, 2013, Ultra provided HCI with notice it was terminating the Agreement without cause, effective thirty days later, on May 1, 2013. *See* Resp. [#12-4] Ex. 2 (Termination Notice). The Termination Notice expressly informed Ransanen, "You will be paid commissions on any order in house, and those booked over the next 30 days for shipment by the end of 2013." *Id.*

On April 18, 2013, HCI sent an email to Ultra, objecting to the termination of the Agreement.[2] Am. Mot. [#6] at 32; Resp. [#12] at 4. Over two years later, HCI sent Ultra a letter dated December 21, 2015, which Ultra claims it received January 11, 2016. Am. Mot. [#6] at 32; Resp. [#12] at 6. Titled "DEMAND FOR PAYMENT RE: Notice of Dispute under **Hank Ransanen's** Henry Controls, Inc. Sales Representative Agreement with ULTRA dated July 12, 2011," the letter claimed Ultra owed HCI $8.64 million in commissions and requested a series of documents. Am. Mot. [#6] at 32–33. The letter also included the following:

> This letter constitutes our good faith notice of dispute and demand for Arbitration pursuant to §8.7 [of the Agreement] to enforce legal rights provided by the Sales Representation Agreement. I have already conferred with Karl Bayer to discuss his availability as an arbitrator in February or March in an effort to resolve this matter both expeditiously and amicably. We expect the commissions to be timely paid on or before January 11, 2016 and if not paid within fifteen (15) days of receiving this demand, that reasons be stated for such denial by January 11, 2016, and the parties proceed to arbitration.

Id. at 33–34.

On January 22, 2016, Ultra responded via letter, contending it had not violated the terms of the Agreement and stating HCI had been paid all commissions owed. Am. Mot. [#6] at 37–38. Ultra's letter also stated it favored a discussion and "if issues remain . . . we can then address the most effective, efficient and timely way forward." *Id.* at 38. Ultra further indicated it did "not see the basis

---

[2] The exact grounds of HCI's objections are unclear as neither party provided the Court with a copy of the April 18, 2013 email.

for any arbitrable claim" and insisted HCI present such a claim if it was seeking arbitration under the Agreement. *Id.* Although the parties continued to correspond, they were unable agree on how to proceed. *See* Am. Mot. [#6] at 39–42.

On March 31, 2017, HCI filed its initial complaint and motion to compel arbitration, properly invoking this Court's diversity jurisdiction. *See* Original Mot. [#1]. HIC then amended its complaint and motion to compel on May 1, 2017. *See* Am. Mot [#6]. HCI claims Ultra attempted to unjustly enrich itself by terminating the Agreement before paying commissions on HCI's sales efforts while Ultra contends HCI seeks commissions on aspirational projects for which Ultra has never received any orders. *See* Am. Mot. [#6]; Resp. [#12].

Analysis

I. Legal Standard

Section 2 of the Federal Arbitration Act (FAA) states, "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "The FAA thereby places arbitration agreements on an equal footing with other contracts, and requires courts to enforce them according to their terms." *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (internal citations omitted).

Generally, the court determines whether a party must be compelled to arbitrate its claim. *Wash. Mut. Fin. Grp., LLC v. Bailey*, 364 F.3d 260, 264 (5th Cir. 2004); *see also Crawford Prof'l Drugs, Inc. v. CVS Caremark Corp.*, 748 F.3d 249, 262 (5th Cir. 2014) ("Ordinarily, whether a claim is subject to arbitration is a question for a court."). Deciding whether to compel arbitration requires

the application of a two-pronged test: (1) is there a valid agreement to arbitrate the claims and (2) does the dispute in question fall within the scope of that arbitration agreement. *Sharpe v. AmeriPlan Corp.*, 769 F.3d 909, 914 (5th Cir. 2014).

In analyzing the second prong, arbitration should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Houston Ref., L.P. v. United Steel, Paper & Forestry, Rubber, Mfg.*, 765 F.3d 396, 412 (5th Cir. 2014) (quoting *AT&T Tech., Inc. v. Commc'n Workers of Am.*, 475 U.S. 643, 650 (1986)). Doubts about the scope of coverage of an arbitration clause in a contract must be resolved in favor of arbitration. *See AT&T*, 475 U.S. at 650; *Sharpe*, 769 F.3d at 914.

II. Application

Neither party disputes there is a valid agreement to arbitrate in this case. Therefore, the Court finds the first prong of the arbitration inquiry satisfied and turns to the second prong, whether HCI's claims fall within the scope of the arbitration agreement.

HCI benefits from the "presumption of arbitrability in the sense that an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *AT&T*, 475 U.S. at 650. "Courts distinguish 'narrow' arbitration clauses that only require arbitration of disputes 'arising out of' the contract from broad arbitration clauses governing disputes that 'relate to' or 'are connected with' the contract." *Pennzoil Expl. & Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061, 1067 (5th Cir. 1998).

Here, the arbitration clause is broad as the parties agreed to arbitrate "any dispute arising between the parties from or in connection with this Agreement . . . ." Am. Mot. [#6] at 23. Broad

arbitration clauses, like the clause in this case, "are not limited to claims that literally 'arise under the contract,' but rather embrace all the disputes between the parties having a significant relationship to the contract regardless of the label attached to the dispute." *Pennzoil Expl.*, 139 F.3d at 1067 (citations omitted). The claims asserted by HCI have a significant relationship to the Agreement. In particular, HCI claims Ultra failed to pay the commissions due under the Agreement while Ultra claims the Agreement does not obligate it to pay any commissions or severance upon termination. Even if, for the sake of argument, the Court found HCI and Ultra's dispute did not arise under the Agreement, the parties' dispute arises "in connection" with the Agreement. *See* Am. Mot. [#6] at 23. Thus, the dispute falls squarely within the scope of the arbitration agreement.

In opposing arbitration, Ultra argues (1) no arbitrable dispute exists and (2) HCI's claims are so vague and speculative they are incapable of resolution by arbitration. Resp. [#12] at 10–15. However, both of Ultra's arguments focus on the merits of the case. HCI's arguments against arbitration amount to no more than the contention HCI's claims are frivolous. Where a party's claims fall within the arbitration agreement, it is for the arbitrator and not the Court to determine whether claims are meritorious or frivolous. *AT&T*, 475 U.S. at 649–50 ([I]n deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims . . . . even if [a claim] appears to the court to be frivolous . . . ."). The Court, therefore, defers to the arbitrators on the validity of HCI's claims and grants HCI's motion to compel arbitration.

The only remaining question concerns the process for initiating arbitration. Ultra argues it did not waive its right to select an arbitrator as specified in the Agreement. Resp. [#12] at 16 (citing Am. Mot. [#6] at 23–24. Because HCI failed to address Ultra's no-waiver argument, the parties

experienced some difficulties in their preliminary communications regarding the dispute, and HCI conceded it filed its motion to compel arbitration "in an abundance of caution," the Court agrees Ultra has not waived its right to select an arbitrator. *See* Am. Mot. [#6] at 8. The parties are therefore ordered to arbitrate their claims in the manner provided for in arbitration agreement, pursuant to 9 U.S.C. § 4. Both parties will confirm the nomination of their arbitrator no later than four weeks after the entry of this order. *See* Am. Mot. [#6] at 23. Operating within its discretion, the Court will stay the case until the arbitration proceedings have been resolved. The parties, however, are required to file status reports with the Court every ninety days.

Conclusion

Accordingly,

IT IS ORDERED that Petitioner Henry Controls, Inc.'s Motion to Compel Arbitration [#6] is GRANTED. The parties are ordered to arbitrate their claims in the manner provided for in the Agreement, confirming the nomination of their arbitrators no later than FOUR (4) WEEKS after the entry of this order;

IT IS FURTHER ORDERED that this case is STAYED pending a decision by the arbitrators; and

IT IS FINALLY ORDERED that the parties shall file status reports regarding the arbitration proceedings with the Court every NINETY (90) DAYS.

SIGNED this the 25th day of July 2017.

Sam Sparks

SAM SPARKS
UNITED STATES DISTRICT JUDGE